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General Assembly of Tennessee
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MAR 5 2009

JOHN R. HANDEL
GENERAL COUNSEL

February 27, 2009

MEMORANDUM

TO: Phyllis Simpson

FROM: Doug Garrett
Legislative Attorney

SUBJECT: Joint Government Operations Rule Review

Rules filed by your agency with the Secretary of State in January, 2009 are scheduled to be heard on Monday, March 30, 2009, at 1:00 P.M. in Room 30 of the Legislative Plaza.

Attached is an agenda which lists the rules to be heard by the Joint Committee and a copy of the rules you are scheduled to present. After briefly summarizing the rules and the changes thereto, you may be asked to explain them in further detail by members of the Committee.

If for any reason you cannot attend this meeting, please let the committee or me know as soon as practicable.

If you have any questions regarding this memorandum, or any questions regarding the meeting, I may be reached at (615) 741-3056.

DG:lmc
Attachments (2)

**SENATE
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A G E N D A

**RULE REVIEW MEETING
GOVERNMENT OPERATIONS
COMMITTEES**

March 30, 2009

Room 30 – Legislative Plaza, 1:00 P.M.

**HOUSE
COMMITTEE
ON GOVERNMENT
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Rep. Susan Lynn, Chair
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Rep. Jason Mumpower
Rep. Gary Odom
Rep. Mike Turner

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Human Services

DIVISION: Family Assistance

SUBJECT: Purpose, Scope, Application of Rules, Definitions, and Right to Apply; Non-Financial Eligibility Requirements - Families First Program

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 71-1-105, 71-3-153, and 71-3-154

EFFECTIVE DATES: April 5, 2009 through June 30, 2008

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

To be financially eligible for the State's financial eligibility program, Families First, a dependent child must be deprived of parental support or care because at least one parent is dead, absent, physically or mentally incapacitated, or unemployed.

The Rules, in essence, have not been changed, but clarified to include a definition of continued absence and language that clearly describes policies relating to the treatment of a dependent child whose parents share custody exactly 50/50 and how this affects the definition of deprivation.

The clarifications to previous regulations include:

Insertion of a definition of continued absence at 1240-01-45-.02(8).

Clarification of temporary absence at 1240-01-45-.02(37).

Clarification of continued absence at 1240-01-47-.23(3).

Addition of a description of the treatment of 50/50 co-parenting situations at 1240-01-47-.23(6)(a) and (b).

Substitution of clarifying language to absence of a parent at 1240-01-47-.26(1)(2)(3)(4).

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Federal regulations describe children deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of the parent, or underemployment of the principal wage earner as those who are potentially eligible for participation in the TANF program. State law also requires that children must meet the above deprivation requirements in order to be eligible for the State's TANF program, Families First.

For purposes of Acts 2007, Chapter 464, the Regulatory Flexibility Act, the Department of Human Services certifies that these rulemaking hearing rules substantially codify existing federal law and substantially codify existing state law, such that, pursuant to Section 6 of the Regulatory Flexibility Act, the Regulatory Flexibility Act's provisions do not apply to these rules. In addition, these rulemaking hearing rules do not appear to affect small businesses as defined in the Act because while Families First participants may be employed or become employed by small businesses, the rules themselves have no direct impact on the operation of those businesses as defined in the Act.

**Department of State
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Phone: 615-741-2650
Fax: 615-741-5133
Email: sos.information@state.tn.us

For Department of State Use Only

Sequence Number: 01-18-09
Rule ID(s): 3962-3963
File Date: 01/20/2009
Effective Date: 04/05/2009

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Tennessee Department of Human Services
Division:	Family Assistance
Contact Person:	Phyllis Simpson
Address:	Office of General Counsel Citizens Plaza Building, 10 th Floor 400 Deaderick Street Nashville, Tennessee
Zip:	37243-1403
Phone:	615-313-4731
Email:	phyllis.simpson@state.tn.us

Revision Type (check all that apply):

☒ Amendment
☐ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only ONE Rule Number/RuleTitle per row)

Chapter Number	Chapter Title
1240-01-45	Purpose, Scope, Application of Rules, Definitions and Right to Apply
Rule Number	Rule Title
1240-01-45-.02	Definitions

Chapter Number	Chapter Title
1240-01-47	Non-Financial Eligibility Requirements - Families First Program
Rule Number	Rule Title
1240-01-47-.23	Deprivation of Parental Support/Care
1240-01-47-.26	Absence of a Parent

Chapter Number	Chapter Title
Rule Number	Rule Title

Chapter 1240-01-45
Purpose, Scope, Application of Rules, Definitions and Right to Apply

Amendments

Rule 1240-01-45-.02 Definitions, is amended by inserting "Continued Absence of the Parent from the Home" alphabetically as a new paragraph and by renumbering the existing paragraphs accordingly, and by inserting a rule cite in parenthesis at the end of the definition of "Temporary Absence", so that, as amended, paragraphs (8) through (38) shall read as follows:

- (8) Continued Absence of the Parent from the Home (Reference State Rule 1240-01-47-.26 (Absence of a Parent) of these rules).
 - (a) Continued absence of the parent from the home constitutes the reason for deprivation of parental support or care when the parent is out of the home, the nature of the absence is such as either to interrupt or to terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child, and the known or indefinite duration of the absence precludes counting on the parent's performance of the function of planning for the present support or care of the child. If these conditions exist, the parent may be absent for any reason, and may have left only recently or some time previously.
 - (b) A parent whose absence is occasioned solely by reason of the performance of active duty in the uniformed services of the United States (as defined in section 101(3) of the Title 37, United States code) is not considered absent from the home.
 - (c) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.
- (9) Custody. Immediate charge and control exercised by a person (or an authority) over another. Legal custody is granted by a court of competent jurisdiction.
- (10) Department. The Department of Human Services.
- (11) Dependent Child. A needy child age 17 or younger who is deprived of parental support or care because at least one parent is dead, absent, physically or mentally incapacitated, or unemployed. Included in this definition also is a child age 18 who is deprived of parent support or care and is a full-time student in a secondary school or an equivalent level of vocational or technical school, and is reasonably expected to complete the course of education/training before age 19 or in the month of his/her 19th birthday.
- (12) Disability. Disability is considered to exist if an individual has been approved for Social Security or SSI on the basis of his/her disability, Veterans Benefits based on his/her 100% disability, or Black Lung benefits based on his/her disability.
- (13) Diversion. An option for assistance groups determined eligible for Families First where the family can get a one-time lump sum grant and/or child care assistance instead of a monthly recurring grant. AGs able to choose the diversion option must meet other criteria beyond Families First eligibility as described in 1240-01-49-.09.
- (14) Family. A family is an eligible group of children and parent(s) or caretaker relatives living in a common residence.

- (15) **Family Cap.** A ceiling on assistance group grant payments for a period of eligibility that occurs when a child is born to the assistance group at least 10 months from the date of application for Families First or the date of implementation of the Families First program, whichever is later.
- (16) **Grantee Relative.** A person who receives Families First for children in his/her care. A grantee relative may be a relative other than a parent. A relative other than a parent may be included in or excluded from the AG, depending on case circumstances, but is not required to be included in the group.
- (17) **Guardian/Conservator.** A guardian is a person who has been named to manage the affairs and/or the person of a minor; a conservator is an individual who has been named to manage the affairs and/or the person of a minor.
- (18) **Half-Siblings.** Half-brothers/sisters who share one natural or adoptive parent.
- (19) **Home.** A home is considered to be a family setting maintained (or in the process of being established) by the relative who requests Families First for a child living with him/her. Under this definition, the family setting may include, but is not limited to, a fixed address, a homeless shelter, or no stationary location. A home exists as long as the relative exercises care and control of the child, even though either the child or the relative is temporarily absent from the customary family setting.
- (20) **Incapacity.** Incapacity is deemed to exist when a parent of a dependent child has a physical or mental defect, illness, or impairment. The incapacity shall be supported by competent medical testimony and must be of such a debilitating nature as to reduce substantially or eliminate the parent's ability to support or care for the otherwise eligible child and must be expected to last for a period of at least 30 days. Incapacity may be a reason for deprivation or may be a reason for a temporary exemption from a work requirement.
- (21) **Joint Custody.** Legal custody of a child held simultaneously by two or more persons. Usually, joint custody is granted to parents of children when the parents are divorced.
- (22) **Legal Father.** The biological father of a child married to the child's mother; the mother's husband when a child is born during the marriage; the child's legally adoptive father; the natural father whose paternity of a child has been legally established.
- (23) **"Living With."** Occupying a place of residence maintained by a specified relative as his/her own home and the home of the child for whom Families First assistance is requested.
- (24) **Marriage During the Receipt of Assistance.** A legal union between a caretaker and another individual during a period of Families First eligibility.
- (25) **Minor.** A person under 18 years of age. A minor is considered a dependent child if he/she is living with a specified relative who is requesting/receiving assistance for him/her. A minor parent may apply for assistance for her/himself and his/her child as a separate assistance group if living outside of a parent's home, or when living in the parent's home and the parent does not choose to apply for that minor (and his/her siblings, if appropriate), or the parent is ineligible for assistance.
- (26) **Natural Parent.** The birth mother; the biological father of a child born in or out of wedlock.

- (27) Payee. The person to whom a Families First grant check is payable.
- (28) Protective Payee. The person other than the caretaker or grantee relative to whom a Families First grant is made payable. A protective payee has responsibility for administering the payment for the benefit of the assistance group.
- (29) Relative Within a Specified Degree of Relationship. Any blood relative, i.e., father, mother, brother, sister, uncle, aunt, first cousin, nephew, niece, or first cousin once removed. This includes relationships to persons of the preceding generations as denoted by prefixes of grand, great or great-great, and those of half-blood; stepfather, stepmother, stepbrother and stepsister; legally adoptive parents of the child or of the child's parents; the natural and other legally adopted children of such persons and the blood relatives of such persons, including persons within the 5th degree of relationship to the child for whom assistance is requested. Termination of parental rights does not affect a child's blood relationship to his natural extended family. However, adoption of a child or his/her parent establishes a legal relationship to a new set of relatives - both immediate and extended families. The adopted relatives within specified degrees of relationship and the blood relatives within specified degrees of relationship qualify to receive Families First for an adopted child. Legal spouses of any of the above-named relatives are considered to be within the specified degree of relationship to the child. This applies even though the marriage may have been terminated by death or divorce. In determining whether any of these relationships exist, for the purpose of either granting or denying assistance, only the necessary blood relationship must be established.
- (30) Set of Children. A set of children is one child, or two or more children who are whole brothers and/or sisters, half-brothers and/or sisters, or adoptive brothers and/or sisters.
- (31) Stepparent. A person who is not the natural or adoptive parent of the child, but who is married to the child's natural or adoptive parent.
- (32) SSI Beneficiary. A person who receives Supplemental Security Income benefits through the Social Security Administration.
- (33) Step-Siblings. Stepbrothers/sisters share no natural or adoptive parent, but their respective parents are married to each other.
- (34) Support. Refers to the furnishing of a means of livelihood or sustenance.
- (35) Supportive Services. Those services deemed essential by the state for a Families First participant to become engaged in countable work, training or educational activities or continue engagement in countable work, training or educational activities.
- (36) Technically Eligible. Meets all non-financial Families First eligibility requirements.
- (37) Temporary Absence. Being away from the home for a short period of time (usually not to exceed three months) with a specific intention of returning to the home on or about a specific date. (Reference State Rule 1240-01-47-.20 (Living in the Relative's Home) of these rules).
- (38) Whole Siblings or Siblings. Brothers/sisters who share the same mother and father.

Authority: T.C.A. §§ 4-5-201 et seq.; T.C.A. § 4-5-202; T.C.A. §§ 71-1-105, 71-3-152, 71-3-153, 71-3-154 and 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq.; 42 U.S.C. § 607(c) and (d); 45 C.F.R. § 233.90 , 45 C.F.R. § 233.90(c)(1)(iii), 45 C.F.R. § 233.90(c)(1)(v)(A) and (B), 45 C.F.R. § 261.2,

45 C.F.R. § 260.31; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.

Chapter 1240-01-47
Non-Financial Eligibility Requirements
Families First Program

Amendments

Rule 1240-01-47-.23 Deprivation of Parental Support/Care, is amended by deleting paragraph (3) in its entirety, and by substituting instead the following new language, so that, as amended, paragraph (3) shall read as follows:

- (3) Absence/Continued Absence from the home in which the child lives of one or both parents, under the criterion described in 1240-01-47-.26(3)(a) of these rules. (The absent parent may have left only recently or some time previously and deprivation of parental support or care by reason of "Absence/Continued Absence" must be reviewed and substantiated at each determination/redetermination of eligibility as provided in 1240-01-47-.26(5) of these rules); or

Rule 1240-01-47-.23 Deprivation of Parental Support/Care, is amended by adding a new paragraph (6) so that, as amended, paragraph (6) shall read as follows:

- (6) Exception: When the custodial and non-custodial parents share custody of their child(ren) on a 50/50 basis, whether deprivation of parental support or care by reason of Absence/Continued Absence from the home exists will be determined under criterion as described in 1240-01-47-.26(3)(a) of these rules.
 - (a) When parents state they share custody exactly 50/50, it must be determined what the parents are actually doing with regard to co-parenting. Though a court order may divide the children's living arrangements and parenting responsibilities 50/50, the parents may not, in fact, be following the court order. If the parents do co-parent exactly 50/50 and the parental functions of guidance and physical care are not interrupted, then we must look at the family as an intact family and consider the income of both parents to determine if the family is financially eligible under the Families First guidelines. If the family is under the GIS and CNS standards (reference Gross Income Standard (GIS) and Consolidated Need Standard (CNS) at State Rule 1240-01-50-.20), then the "applicant" parent would be able to receive Families First, if otherwise eligible.
 - (b) The "applicant" in true 50/50 co-parenting situations will be the parent who is the first to apply for Families First. If one parent is already receiving Families First for their children, and the second parent applies, the second parent's application will be denied if the parents are still co-parenting 50/50. If both parents come in together to apply, it will be the parents' responsibility to decide which one of them will receive benefits for the children.

Authority: T.C.A. §§ 4-5-201 et seq.; T.C.A. § 4-5-202; T.C.A. §§ 71-1-105, 71-3-152, 71-3-153, 71-3-154 and 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq. and 42 U.S.C. § 603; 45 C.F.R. § 233.90 and 45 C.F.R. § 233.90(c)(1)(iii); Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.

Rule 1240-01-47-.26 Absence of a Parent, is amended by deleting paragraph (1) and subparagraph (b) in their entirety, and by substituting instead the following language, so that, as amended, paragraph (1), subparagraphs (a) and (b), shall read as follows:

- (1) A child may be determined to be deprived of parental support or care by reason of the "Absence/Continued Absence" of one or both parents from the home in which the child lives under criterion as described in 1240-01-47-.26(3)(a) below.
 - (a) As a condition of eligibility for the entire assistance group for Families First, the remaining parent or other applicant/grantee relative must give required information about the absent parent(s) and cooperate with the IV-D child support agency as necessary.
 - (b) If the facts establish the allegedly absent parent has a separate living arrangement from the child(ren) for whom Families First is requested and is not providing financial maintenance, physical care or guidance sufficient to meet the child's needs, deprivation of parental support or care by reason of "Absence/Continued Absence" from the home under the criterion described in 1240-01-47-.26(3)(a) below may be determined to exist.

Rule 1240-01-47-.26 Absence of a Parent, is amended by deleting paragraph (2) in its entirety and by substituting instead the following language, so that, as amended, paragraph (2) shall read as follows:

- (2) Deprivation of parental support or care by reason of Absence/Continued Absence from the home under criterion as described in 1240-01-47-.26(3)(a) below may exist due to any of the following:
 - (a) Divorce of natural parents and only one or no parent remains in the home with the child(ren);
 - (b) Separation of parents;
 - (c) Desertion of one or both parents;
 - (d) Imprisonment of one or both parents;
 - (e) Institutionalization of one or both parents;
 - (f) At least one parent is serving a court-imposed sentence of unpaid public service while residing at home;
 - (g) Single parent adoptions.

Rule 1240-01-47-.26 Absence of a Parent, is amended by deleting the introductory language at paragraph (3) that reads, "(3) When Absence Exists", and by substituting instead the language, "(3) Deprivation of parental support or care by reason of "Absence/Continued Absence" from the home exists when:". Paragraph (3) as amended above is further amended by deleting subparagraph (a) in its entirety, and by substituting a new subparagraph (a). Subparagraphs (b) through (f) under paragraph (3) are not being amended and shall remain as they currently exist. As amended, paragraph (3), subparagraph (a) shall read as follows:

- (3) Deprivation of parental support or care by reason of "Absence/Continued Absence" from the home exists when:
 - (a) At least one parent is absent from the home and the nature of the absence:
 1. Interrupts or terminates the parent's functioning as a provider of financial maintenance, physical care or guidance for the child; and

2. The known or indefinite duration of the absence precludes counting on the parent to perform his/her function of planning for the present support or care of the child. If these conditions exist, the parent may be absent for any reason, and may have left only recently or some time previously. (Reference 1240-01-47-.26(3)(b) and (f) below for "Absence" due to court-imposed unpaid public service and active duty in the uniformed services of the U.S.).

Rule 1240-01-47-.26 Absence of a Parent, is amended by deleting paragraph (4) in its entirety, and by substituting instead the following language, so that, as amended, Paragraph (4) shall read as follows:

- (4) Duration of Absence. Where "Absence/Continued Absence" under the criterion described in 1240-01-47-.26(3)(a) above is determined to exist, the absent parent may have left only recently or some time previously. Deprivation of parental support or care by reason of "Absence/Continued Absence" must be reviewed and substantiated at each determination/redetermination of eligibility as provided in 1240-01-47-.26(5) below.

Authority: T.C.A. §§ 4-5-201 et seq.; T.C.A. § 4-5-202; T.C.A. §§ 71-1-105, 71-3-152, 71-3-153, 71-3-154 and 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq. and 42 U.S.C. § 603; 45 C.F.R. § 233.90 and 45 C.F.R. § 233.90(c)(1)(iii); Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services (board/commission/ other authority) on 01/06/2009 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/29/08

Notice published in the Tennessee Administrative Register on: 11/14/08

Rulemaking Hearing(s) Conducted on: (add more dates). 12/16/08



Date: January 6, 2009

Signature: [Signature]

Name of Officer: Phyllis Simpson

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: JANUARY 6, 2009

Notary Public Signature: Regina D. Mitchell

My commission expires on: May 8, 2012

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Signature]

Robert E. Cooper, Jr.
Attorney General and Reporter
1-15-09

Date

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Filed with the Department of State on: 1/20/09

Effective on: 4/5/09

The Hargett

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Secretary of State

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